

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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GREEN TREE SERVICING LLC,
Plaintiff,
v.

SFR INVESTMENTS POOL 1, LLC;
SPRING MOUNTAIN RANCH HOA; DOES
1 through 10, inclusive; and all others who
claim interest in the subject property located at
8525 Brody Marsh Ave, Las Vegas, NV
89143.

Defendants.

Case No. 2:15-cv-630-APG-NJK

ORDER DENYING MOTION TO DISMISS

(Dkt. #9)

Defendant Spring Mountain Ranch Homeowners Association moves to dismiss Green Tree's complaint on the ground that, according to Nevada Revised Statutes 38.310, those claims first must be submitted to mediation. (Dkt. #9.) But the mediation provision in § 38.310 is designed for disputes between homeowners and homeowners associations—not disputes between beneficiaries of deeds of trust (which Green Tree is) and homeowners associations. In addition, Green Tree is trying to quiet title, so it is therefore exempt from the mediation requirements of Nev. Rev. Stat. § 38.310. Accordingly, I deny Spring Mountain's motion to dismiss.

I. BACKGROUND

1 Green Tree is the beneficiary of the first deed of trust encumbering a house at 8524 Brody
2 March Avenue in Las Vegas, Nevada. (Dkt. #1-7.) When the owner of the property defaulted on
3 her obligation to pay HOA fees, Spring Mountain initiated foreclosure proceedings. (Dkt. #1 at ¶¶
4 20-24.) At a non-judicial foreclosure sale in January 2013, SFR Investments submitted the
5 winning bid of \$24,000. (*Id.* at ¶ 22.) Green Tree alleges that it was not given adequate notice of
6 the foreclosure proceedings and that the sale was invalid. It brings one claim for quiet title and
7 one claim for declaratory relief. (*Id.* at ¶¶ 60-79.)

1 II. DISCUSSION

2 Spring Mountain contends that this court lacks jurisdiction because, in its view, the claims
 3 require the interpretation, application, or enforcement of the CC&Rs, and therefore must first be
 4 submitted to mediation through the Nevada Real Estate Department, pursuant to § 38.310. I
 5 entertained—and rejected—similar arguments in *Bank of America v. SFR Investments*, Case No.
 6 2:15-cv-1042-APG-PAL, 2015 WL 6163452 (D. Nev. Oct. 19, 2015) and *Wells Fargo v. SFR*
 7 *Investments*, Case No. 2:15-cv-748-APG-GWF (D. Nev. October 30, 2015). I focused on how
 8 there is no indication that § 38.310 applies to beneficiaries of deeds of trust, a point United States
 9 District Judge Jones noted in *U.S. Bank Nat. Ass'n v. NV Eagles, LLC*: “The statute” he held,
 10 “clearly applies to homeowners who are in disagreement with their HOAs regarding the
 11 interpretation and effect of applicable CC&Rs.” Case No. 2:15-CV-00786-RCJ, 2015 WL
 12 4475517, at *3 (D. Nev. July 21, 2015) (citing *Hamm v. Arrowcreek Homeowner's Ass'n*, 183
 13 P.3d 895, 900 (Nev. 2008)). Legislative history supports this holding. At the initial legislative
 14 hearing, the statute’s prime sponsor described its purpose:

15 Mr. Schneider, the prime sponsor of [the statute], stated it is a form of dispute
 16 resolution which developed as a result of his working closely with property
 17 management associations. Over the past year, he has been privy to problems
 18 arising in the associations for the homeowners, by the homeowners. The
 19 associations have developed their own constitutions which are referred to as
 20 covenants, conditions, and restrictions (CC&Rs). Although these associations
 21 have flourished and existed with encouragement, there are personality problems
 22 and management problems between the board and the residents. As a result, many
 23 lawsuits are being filed which could be resolved in some sort of dispute resolution
 24 such as arbitration. Dispute resolution may bring about results in 30 to 45 days
 25 rather than the years it takes [for] a lawsuit to proceed through District Court.¹

26 Nowhere is there any mention of beneficiaries of deeds of trust. Instead, the statute targets
 27 disputes “between the board and the residents.” Case No. 2:15-CV-00786-RCJ, 2015 WL
 28 4475517, at *3.

29 Just as Judge Jones ruled in *NV Eagles*, “[t]his case is not based upon an interpretation of
 30 the HOA’s CC&Rs, and any interpretation thereof required to resolve the dispute between [Green

31 ¹ <http://www.leg.state.nv.us/Session/68th1995/minutes/AJD214.txt>. (Minutes of Meeting of
 32 Assembly Judiciary Committee: February 14th, 1995.)

1 Tree] and the various Defendants is ancillary to the issue of paramount concern: was [Green
2 Tree's] deed of trust extinguished by the HOA's foreclosure sale?" Moreover, the Supreme Court
3 of Nevada has held that quiet title actions are exempt from § 38.310 because a quiet title claim
4 requires the court to determine who holds superior title to a particular parcel of land. *McKnight*
5 *Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013). Therefore, § 38.310 is not a
6 barrier to Green Tree's effort to quiet title to the subject property. As a result, I deny Spring
7 Mountain's motion.

8 **III. CONCLUSION**

9 IT IS THEREFORE ORDERED that defendant Spring Mountain's motion to dismiss
10 **(Dkt. #9) is DENIED.**

11 DATED this 14th day of December, 2015.



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ANDREW P. GORDON
14 UNITED STATES DISTRICT JUDGE
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